

Agenda Item	
A-1	No one wished to be heard during the Open Comment Period.
B-1	President John Hunziker called the meeting to order at 7:00 P.M. with the following members present: Councilmembers Dennis Hanson, Marcia Marcoux, Jean McConnell, Sandra Means, Bob Nowicki. Absent: Councilmember Walter Stobaugh. Also present: Mayor Ardeall F. Brede.
D-1-11	Councilmembers Means moved, Marcoux seconded, to approve the following consent agenda items.
D-1	Approved the minutes of the July 7, 2004, Council meeting.
D-2	See at end of D Items.
D-3	Approved the following licenses and miscellaneous activities: <u>Gambling – Premise Permit</u> Olmsted County Hockey Association at Rookies Sports Bar <u>Gambling – Temporary</u> Church of the Resurrection, 1600 11 th Avenue S.E. Hiawatha Homes Foundation – at Mayo Civic Center – Raffle – November 23 through 27, 2004. Hiawatha Homes Foundation – at Kahler Grand Hotel – Raffle – February 26, 2005. <u>Heating Contractor</u> Nile Anderson Air & Metal, Rochester <u>Master Installer</u> Nile Anderson, Rochester <u>Sewer and Drains License</u> B & C Plumbing & Heating, Rochester <u>Sign Installers License</u> Fromms Signs, Inc. – Blaine <u>Sound Amplification</u> Pint's Pub – Outdoor Sound Permits – August 7, 13, 14, 21, 28, September 4, 11, 18, 25, and October 2, 9, 19, 26, 2004 – 4:00 to 11:00 PM. National Night Out – 1 st Street SW Neighborhood Watch at 902 First Street S.W. – August 3, 2004 National Night Out – 10 th Avenue NE Neighborhood Watch – August 3, 2004, 5:30 to 10:00 PM Mickey's Irish Saloon – Outdoor Band – August 28 – 8:00 to 11:00 PM Holiday Inn South – 1630 South Broadway – 11 th Annual Parking Lot Party – August 27, 2004 – 9:00 PM to 12 Midnight. (Please waive 11:00 PM time period as in the past.)

RECORD OF OFFICIAL PROCEEDINGS OF THE COMMON COUNCIL
CITY OF ROCHESTER, MINNESOTA
Regular Meeting No. 18 – August 2, 2004

7130

Agenda Item	
	<p>National Night Out Party – Hiawatha Homes, Inc. at 2814 Bandel Drive NW – August 3, 2004 – 7:00 to 8:00 PM</p> <p>Rochester Track Club – Holiday Inn Half Marathon – August 21, 2004 – 8:00 to 10:30 AM</p> <p><u>Miscellaneous Activities</u></p> <p>National Night Out – 10th Avenue NE Neighborhood Watch – August 3, 2004, 5:30 to 10:00 PM</p> <p>National Night Out – 16th Avenue NW Neighborhood Watch – August 3, 2004, 6:30 to 8:00 PM</p> <p>National Night Out – 16 ½ Street SE Neighborhood Watch – August 3, 2004 – 5:30 to 9:00 PM</p> <p>National Night Out – 1344 Second Street NW – August 3, 2004 – 5:30 to 10:30 PM</p> <p>National Night Out – John Marshall Neighborhood Association, 13th Avenue between 16th Street & 16th Avenue NW – August 3, 2004 – 6:00 to 9:00 PM</p> <p>Rochester Track Club – Holiday Inn Half Marathon – August 21, 2004 – 8:00 to 10:30 AM</p>
D-4	Approved Accounts Payable in the amount of \$3,902,189.18 and Investment Purchases of \$8,494,137.50.
D-5	Adopted Resolution No. 379-04 approving the recommendation not to waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04 and authorized the Mayor and City Clerk to sign the LMCIT Liability Coverage-Waiver Form for the City of Rochester LMCIT policy as well as the Waiver Form for the South Zumbro Watershed Joint Power Board policy.
D-6	Adopted Resolution No. 380-04 authorizing payment to Zumbro River Constructors in the amount of \$16,527.50 for Project No. 9408 (J-2247) “Minor Work Order #43 – Highway 52 mainline and ramp bridges over Cascade Creek”.
D-7	Adopted Resolution No. 381-04 approving the Highway Maintenance Agreement for the period of July 1, 2004 to June 30, 2005, with the County of Olmsted for the maintenance of 10.65 miles of County highways within the City of Rochester.
D-8	Adopted Resolution No. 382-04 approving the City/Owner contract with Arcon Development, Inc. and Elcor Construction, Inc. for Project No. J-5142 “Basic Construction in Shannon Oaks Second Subdivision”.
D-9	Adopted Resolution No. 383-04 approving the Settlement Agreement with the Eastwood Bank and Carpet One for right of way acquisition for Project No. J-7708 “Kings Run Sewer Construction”.
D-10	Adopted Resolution No. 384-04 approving the First Supplemental Amendment to the Development Agreement with Arcon Development for Crimson Ridge.
D-11	See at end of D Items

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	<p>Ayes (6), Nays (0). Motion carried.</p>
D-2	<p>Councilmember Nowicki moved, Marcoux seconded, to approve the request to initiate an amendment to the Sign Ordinance to extend the length of time allowed to rebuild a sign structure, with an advertising sign credit, from two to five years with the understanding that the amendment is restricted to Highways 52 and 63 and refer the request to the Planning and Zoning Commission for further study. Ayes (6), Nays (0). Motion carried.</p>
D-11	<p>Councilmember Nowicki said that he was concerned that the federal government hasn't adopted the federal bonding bill for transportation which will affect the Highway 52 and 63 projects.</p> <p>Councilmember Marcoux, a member of the TEA-21 Task Force for two years, noted her frustration as well. She said some cities are holding on starting transportation projects but other cities, such as Rochester, where the project has been on-going and in the process, are continuing knowing that the funding will be coming at some point in time.</p> <p>Councilmember Marcoux moved, Nowicki seconded, to adopt Resolution No. 385-04 entering into an Agency Agreement with the Minnesota Department of Transportation prescribing the terms and conditions of said federal aid participation on Overland Drive N.W. – Project No. J-9708. Discussion.</p> <p>Doug Nelson, Public Works Department, said that the area transportation partnership is put in the TEA-21 list. This project has been approved for a number of years and then getting the funding for the project. The funding is tied to the current federal bonding bill. It is anticipated that the funds will be coming yet this year.</p> <p>Ayes (6), Nays (0). Motion carried.</p>
E-1	<p>A Hearing on the General Development Plan #239 to be known as Morris Hills North by Joe Pearson located north of the planned Morris Hills development, east of TH 63 and south of 48th Street NE.</p> <p>Wishing to be heard was Jeff Pruess, McGhie & Betts, representing the developer. He noted agreement with the nine conditions; the ninth condition was added by the Planning Staff as follows: "When the property is platted, the development must be re-named to a unique name, unless written consent is provided from Morris Hill developers to use the name Morris Hills North".</p> <p>Councilmember Means asked about drainage and possible structural problems because of the presence of the Decorah Edge. Mr. Pruess explained that there is only one area of major concern and that will be addressed by putting a park at the location.</p>

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E-2	<p>Councilmember Nowicki said that plans show 41st Street on the property. He said that the residents are concerned about the street closeness to the homes. Mr. Pruess said that it has been changed to show 41st Street on the property line. He will address the problem with the land developers to see if it can be moved further to the south.</p> <p>Councilmember Means asked about the sewer capacity for the development. Doug Nelson, Public Works Department, said that a project will move the Viking Hills sanitary sewer to another line to add additional capacity for this development and the Stonehedge Development.</p> <p>Wishing to be heard was Dave Kennedy, 925 Northland Place N.E. He asked to see the plan for 41st Street. He said that the first Morris development added homes and now this development will be adding 100+ lots to add more traffic on 41st Street. The traffic and the intersection are problems.</p> <p>Doug Nelson, Public Works Department, said that they have working with the Morris Hills developer to look at a variety of options. The current plan pulls the road away approximately 100 feet from the backyard lot lines in the Viking Hills area. The intersection at Highway 63 is one of the items that have been predetermined by MnDot and the City must work within that constraint. Plans have not been finalized. A 2005 construction period is anticipated.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Nowicki moved, Marcoux seconded, to approve General Development Plan #239 to be known as Morris Hills North by Joe Pearson with nine conditions and instructed the City Attorney to prepare Findings of Fact, Conclusions of Law, and Order. Ayes (6), Nays (0). Motion carried.</p> <p>A Hearing on the Final Plat #03-48 by Pebble Creek LLC to be known as Pebble Creek located in the Pebble Creek Special District and is located along the west side of 60th Avenue and south of 55th Street NW.</p> <p>Wishing to be heard was Joan DeWitz, 604 11th Avenue N.W., representing Pebble Creek LLC. She noted approval the conditions with the exceptions of Condition #3 and #6. Ms. DeWitz said she has tried to enter into a development agreement with the City since June 2, 2003. A draft was received by them 11 months and 5 days later. Since that time, the draft was returned by them and they have met with City engineers but there has been no agreement returned since May, 2004. Ms. DeWitz said that Terry Adkins, City Attorney, has stated that since the conditions were agreed on the preliminary plat, the conditions cannot be changed for the final plat. When the conditions were agreed to, the agreement had not yet been seen. One of the requirements of the development agreement is that if, and when the City would ask, payment of the required fees for the entire 391 acres would be required which would come to approximately \$5 million. The City cannot be asking for the entire payment for a 10-15 year plan. The developer is not financially able to pay the total cost. The Land Development Manual, Chapter 61.231 and 61.251, allows for the development of streets and utilities without a development agreement</p>

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provided the plat is not recorded until after the improvements are completed. She said that they are continuing to work towards a signed development agreement. She asked that the Council approve the Final Plat with the addition of a sentence for Condition #3: "...or proceeding of this property under the Land Development Manual 61.231 and 61.251 where the improvements must be complete before recording the plat in lieu of a development agreement."

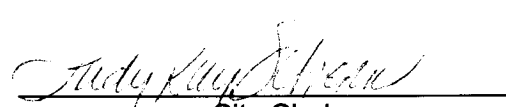
Ms. DeWitz then addressed the Council on Condition #6 and the controlled access on the side of the lots whose backyards are in the alley. Two corner lots would not be able to work with controlled access. When the preliminary plat was approved, the corner lots were not included. The lots are 45-feet wide. The separation of the driveway off 61st Street is 35 feet to the center of the driveway. This would leave a ten-foot driveway or no garage. If a variance would be approved for these two lots for a 29-foot setback, the driveways would be acceptable.

Mike Nigbur, Public Works Department, said that the developer would need to design their interior site to fit the code requirements. Mr. Nigbur said that if we design and build the entire infrastructure needed to serve the property all at once, from a cash flow standpoint, the City would have the right to request the funds from the owner. That has not been asked for. The City has indicated that this would be done on a phase-by-phase basis. The fees have not been worked out yet but will include fees for sanitary sewer availability, a fee for the Transportation Improvement District, and a fee for water availability. Mr. Nigbur also said that the eleven month delay was also a result of the developer waiting for several studies on drainage as well as delays by the City.

Ms. DeWitz said that, because the City does not know, she is unaware of what the charges will be for the Transportation Improvement District, the SAC charges; she cannot enter into a development agreement without knowing what the charges will be.

Terry Adkins, City Attorney, said that he had talked today with Julie Leitzen, representing the developer, noting that the final plat could not be recorded until such time as a development agreement was entered into. She asked that under Condition #3 the wording in the first sentence "...and/or development of the property"...be removed as it hindered the ability to proceed while the negotiations were continuing on the development agreement. In talking with Mitzi Baker of the Planning Department and Mike Nigbur of the Public Works Department, they wording requested would be removed and the remainder of Condition #3 would remain as is. Therefore, the plat could not be recorded until the execution of the development agreement but the development could be proceeded with while the negotiations continued. Ms. Leitzen then called Mr. Adkins back and said that she preferred that Condition #3 be removed and they would proceed under Land Development Manual 61.231 and 61.251. Mr. Adkins then pointed out that the preliminary plat process is used identify the issues and come up with the conditions. When the final plat is applied for, the preliminary plat is looked at to make sure that condition are adhered to, and if they have, the final plat then follows. A final plat should not have new issues or new conditions brought up during the hearing process. Section 61.236 of the Land Development Manual says

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	<p>the final plat is to be rejected if it does not conform to the preliminary plat. This final plat application does not conform with the approved preliminary plat. If the developer wants to revisit the preliminary plat's conditions, then an amended preliminary plat can be filed to restart the process.</p> <p>Councilmembers McConnell moved, Marcoux seconded, to continue Final Plat #03-48 by Pebble Creek LLC to be known as Pebble Creek to September 8, 2004. Ayes (6), Nays (0). Motion carried.</p>
E-3	<p>A Hearing on the Incentive Development #04-21 by Gloria Dei Lutheran Church adding approximately 4,749 sq. feet of floor area to the site located north of 12th St. NW, between 11th and 12th Ave. NW.</p> <p>Wishing to be heard was Travis Tegethoff, Yaggy-Colby Associates, representing the applicant. He noted agreement with the staff recommendations and five conditions.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Means moved, Marcoux seconded, to adopt Resolution No. 387-04 approving Incentive Development #04-21 by Gloria Dei Lutheran Church with five conditions and waiving the Final Plan Review. Ayes (6), Nays (0). Motion carried.</p>
E-4	<p>A Hearing on Annexation Petition #04-11 by Randy and Mary Reynolds to annex land located along the south side of Marion Road SE and north of 30th Street SE. in Marion Township.</p> <p>Having no one wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Nowicki moved, Marcoux seconded, to approve Annexation Petition #04-11 by Randy and Mary Reynolds and instructed the City Attorney to prepare the required Ordinance for adoption. Ayes (6), Nays (0). Motion carried.</p>
E-5	<p>A Hearing on the Annexation Petition #04-12 by Arcon Development to annex land located along the north side of 40th Street SW and west of 18th Avenue SW in Rochester Township.</p> <p>Wishing to be heard was Jeffrey Pruess, McGhie & Betts, representing the petitioner. Mr. Pruess was available for questions.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Marcoux moved, McConnell seconded, to approve Annexation Petition #04-12 by Arcon Development and instructed the City Attorney to prepare the required Ordinance for adoption. Ayes (6), Nays (0). Motion carried.</p>

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E-6	<p>A Hearing on Annexation Petition #04-13 by GP Development, Inc to annex land located west of 18th Avenue SW, north of the Hart Farms development and south of the Merrihills development in Rochester Township.</p> <p>Wishing to be heard was Jeffrey Pruess, McGhie & Betts, representing the petitioner. Mr. Pruess was available for questions.</p> <p>Having no one further wishing to be heard, President Hunziker closed the hearing.</p> <p>Councilmembers Hanson moved, Nowicki seconded, to approve Annexation Petition #04-13 by GP Development, Inc. and instructed the City Attorney to prepare the required Ordinance for adoption. Ayes (6), Nays (0). Motion carried.</p>
G-2a	<p>An Ordinance Annexing to the City of Rochester Approximately 17.47 Acres of Land Located in a Part of the South Half of the Southeast Quarter of Section 17, Township 106 North, Range 13 West, Olmsted County, Minnesota, was given a first reading. (Annex Petition #04-11 – South side of Marion Road SE, North of 30th Street SE)</p>
G-2b	<p>An Ordinance Annexing to the City of Rochester Approximately 19.19 Acres of Land Located in the South Half of the Southwest Quarter of Section 22, Township 106 North, Range 14 West, Olmsted County, Minnesota, was given a first reading. (Annex Petition #04-12 – North side of 40th Street SW, West of 18th Avenue SW)</p>
G-2c	<p>An Ordinance Annexing to the City of Rochester Approximately 52.25 Acres of Land Located in the Northwest Quarter of Section 22, Township 106 North, Range 14 West, Olmsted County, Minnesota, was given a first reading. (Annex Petition #04-13 – West of 18th Avenue SW, North of Hart Farms Development, South of Merrihills Development)</p>
G-3a	<p>An Ordinance Annexing to the City of Rochester Approximately 16.74 Acres of Land Located in the Northwest Quarter of Section 29, Township 107 North, Range 14 West, Olmsted County, Minnesota, was given a second reading. Councilmembers Nowicki moved, Marcoux seconded, to adopt the Ordinance as read. Ayes (6), Nays (0). Motion carried. (Annexation Petition #04-10 by Roger Carlson – North Side of 19th Street NW and East of 50th Avenue NW)</p>
J-1	<p>Having no further business, Councilmembers Nowicki moved, Marcoux seconded, to adjourn the meeting. Ayes (6), Nays (0). Motion carried.</p> <div data-bbox="909 1659 1412 1785"> City Clerk</div>